

# **SUPERANNUATION DEED**

**for**

**The Chad Quigley Superannuation Fund**

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**DEED** made by the person or persons named as the Trustee in the Schedule to this Deed

### **Establishment**

1. The Trustee establishes a Self Managed Superannuation Fund to be known by the name specified in the Schedule, for the purpose of providing superannuation benefits for its Members and their Dependants and for such incidental and ancillary purposes as the Regulator may from time to time approve.

### **Acceptance**

2. The Trustee resolves to act as trustee of the Fund with effect from the date of this Deed as evidenced by its execution of this Deed with and subject to the powers and provisions contained within this Deed and the Rules.

### **Establishment Date**

3. The Fund is established on the date of this Deed.

### **Rules**

4. The Rules of the Fund are the Rules attached to this Deed.

### **Purpose**

5. The purpose of the Fund is to provide superannuation benefits to Members. Where the trustees are individuals the sole or primary purpose of the Fund is the provision of Old Age Pensions. Where the trustee of the Fund is a Constitution Corporation a lump sum and/or a pension may be paid to a member in the event of retirement or incapacity.

### **Self Managed Superannuation Fund**

6. The Fund is established and must at all times be maintained and qualify as a complying superannuation fund under the Tax Act and the Act.

### **Definitions and Interpretation**

7. (a) In this Deed the expression "Rules" mean the Rules attached to this Deed or any amendment or substitution of those Rules;  
(b) Additional definitions and the interpretation of this Deed and the Rules shall be as set out in the Rules and which Rules form part of this Deed.

**SCHEDULE**


Name of Trustee/s:	<b>Angela Joanne Quigley</b> <b>Chad Hugh James Quigley</b>
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Name of Fund:	<b>The Chad Quigley Superannuation Fund</b>
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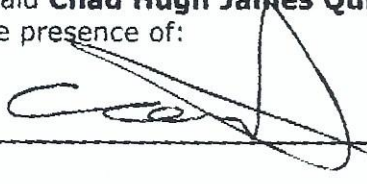
**EXECUTED** as a Deed on 21st day of May 2008


**SIGNED SEALED and DELIVERED** by  
the said **Angela Joanne Quigley**  
in the presence of:

  
\_\_\_\_\_

  
\_\_\_\_\_  
Witness

**SIGNED SEALED and DELIVERED** by  
the said **Chad Hugh James Quigley**  
in the presence of:

  
\_\_\_\_\_

  
\_\_\_\_\_  
Witness

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## **1. Definitions and Interpretation**

### **1.1 Definitions**

In these Rules:

"Act" means the Superannuation Industry (Supervision) Act 1993, the Corporations Act 2001 and the Tax Act and any other law of the Commonwealth of Australia which deals with superannuation or taxation in relation to superannuation (as the context requires) and includes any regulations, declarations or orders made under that Act or any other law or any requirement of a Regulator;

(a) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or

(b) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund;

"Asset" means any cash investments and any other form of property;

"Associate" has the meaning given by the Act;

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act and shall include a Non-Member Spouse;

"Benefit" means a benefit or entitlement payable or distributable by the Fund including a pension;

"Benefit arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and superannuation holding accounts reserve;

"Benefit Schedule" means Schedule 1 to these Rules;

"Binding Death Benefit Nomination" means a direction which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit and referred to in Rule 12.6.4;

"Child", in relation to a Beneficiary, includes a stepchild, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the Act;

"Constitutional Corporation" has the meaning given by the Act;

"Contribution" means payments and/or transfers of property to the Fund by or in respect of a Member and/or payments of expenses on behalf of the Fund;

"Death Benefit" means a benefit payable on a Member's death. It includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death;

"Death Benefit Nomination" means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination;

"Deed" means the Deed as amended from time to time to which these Rules are attached;

"Dependant", in relation to a Beneficiary, includes:

(a) the Beneficiary's Spouse;

(b) the Beneficiary's Child;

- (c) any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Beneficiary;
- (d) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- (e) any person who is a dependant within the meaning of the Act;

"Eligible Rollover Fund" has the meaning given by the Act;

"Employer" means an employer of a Member who contributes to the Fund on behalf of the Member;

"Excess contributions tax liability" means any tax imposed by reason of the Superannuation (Excess Concessional Contributions Tax) Act 2007 or the Superannuation (Excess Non-Concessional Tax) Act 2006 as amended;

"Expenses" means all direct and indirect costs of the establishment, operation and termination of the Fund, including any tax, insurance costs and any fees or charges imposed on or paid by the Trustee in connection with the Fund;

"Family Law Act" means the Family Law Act 1975 (Cth);

"Family Law Legislation" means

- (a) the Family Law Act and the Regulations made under that Act; and
- (b) any other legislation, including the Act, that imposes legal requirements regarding the dealing with the interests of a beneficiary of a superannuation fund in connection with a marital relationship, including on the breakdown of such a relationship and associated matters;

"Family Law Requirement" means any requirement whatsoever under Family Law Legislation relating to superannuation benefits of parties or former parties to a marriage and incidental matters, including without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Beneficiary's interest in the Fund;

"Financial Instrument" includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

"Fund" means the fund referred to in the Schedule and established in accordance with the Deed;

"Gainful Employment" has the meaning given by the Act and includes full time and part time employment;

"Indicative Death Benefit Nomination" means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes as to payment of the Member's Death Benefit and referred to in Rule 12.6.4;

"Investment Earnings" means the positive or negative amount which the Trustee determines to be the Fund's profit for the period, having regard to the income of the Fund, the expenses of the Fund, the movement in the value of the Fund assets (including unrealised assets), the Fund liabilities (including unrealised liabilities) and any other matters the Trustee considers appropriate.

"Investment Option" means an investment strategy that may be chosen in respect of investments in the Fund in accordance with these Rules;

"Legal Personal Representative" means the executor of the will or administrator of the estate of a deceased member, the Trustee of the estate of a member under a legal disability, a person who holds an enduring power of attorney granted by a member or the



parent or legal guardian of a member under the age of eighteen.

"Liabilities" means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;

"Member" means a person who has been admitted as a member of the Fund in accordance with Rule 9 and who has not ceased to be a Member;

"Member's Account" means an account maintained in respect of a Member in accordance with Rule 9.8;

"Member's Account Balance" means the amount standing to the credit of a Member's Account, determined in accordance with Rule 9.8.2;

"Member Spouse" has, in relation to and interest in the Fund the same meaning as in the Family Law Act;

"Non-Member Spouse" has in relation to an interest in the Fund the same meaning as that term has under the Family Law Act;

"Old Age Pensions" has the meaning given by the Act;

"Payment Flag" has the same meaning as in the Family Law Act;

"Payment Split" has the same meaning as in the Family Law Act;

"Policy" means an insurance policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest;

"Preserved Benefits" means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits;

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other governmental authority responsible for the administering of the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds, as relevant;

"Release authority" means a written notice provided by the Commissioner of Taxation authorising the Member to withdraw monies from the Fund to pay excess contributions tax as referred to in Rule 11.2;

"Reserve Account" means an account or accounts established and maintained in accordance with Rule 15;

"Retirement Age" means:

- (a) age 65; or
- (b) if the Act stipulates another age at which benefits can generally be paid from a regulated superannuation fund whether or not a Member has ceased Gainful Employment, that age;

"Rule" means these Rules including a provision of the Schedule as amended from time to time;

"Schedule" means where the context allows the Schedule to the Deed or the Schedules to the Rules;

"Service" means a period of Gainful Employment by the Member;

"SIS Regulations" means the Superannuation Industry (Supervision) Regulations 1994 as

amended;

"Social Security Act" means the Social Security Act 1991 and the Veterans' Entitlement Act 1986 and all other requirements with which a payment made from the Fund must comply to be treated as an Asset-Test Exempt Income Stream for the purposes of that Act;

"Spouse", in relation to a person, includes:

- (a) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
- (b) any other person who is a spouse for the purposes of the Act;

"Successor Fund" has the meaning given by the Act;

"Tax" includes:

- (a) any form of taxation surcharge levy duty or other government charges that the Trustee must pay out of the Fund or a member or former member is required to pay;
- (b) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraph (a);

"Taxable component" has the meaning given by section 995-1(1) of the Tax Act;

"Tax Act" means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (as amended) as appropriate and the regulations made under the relevant Act;

"Tax free component" has the meaning given by section 995-1(1) of the Tax Act.

"Total and Permanent Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, total and permanent disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Totally and Permanently Disabled" has a corresponding meaning.

"Temporary Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, temporary disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Temporarily Disabled" has a corresponding meaning.

"Trustee" means the trustee described in the Schedule and includes the trustee for the time being of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes any replacement or additional trustees.

## 1.2 Compliance

The Fund must meet the requirements of the Act to be regulated as a complying self managed superannuation fund.



To the extent that anything in the Deed and these Rules is inconsistent with the Act then it is to be severed from the Deed and these Rules.

The Deed and these Rules includes the provisions of the Act applying to the regulation of self managed superannuation funds, and in the absence of a specific provision in the Deed and these Rules those provisions are (to the extent they are relevant to the Fund) deemed to be incorporated in the Deed and these Rules.

If there is any conflict between the provisions of the Deed and these Rules and the provisions deemed to be included in the Deed and these Rules as provided above then the deemed provisions shall prevail over the provisions of the Deed and these Rules to the extent of any inconsistency.

Nothing in the Deed and these Rules requires the Trustee or any other person to do anything that is contrary to the Act or prevents the Trustee or any other person doing anything that is required to be done to comply with the Act.

### 1.3 Interpretation

In the Deed and these Rules unless the contrary intention appears or can reasonably be implied from the context:

A term used in the Deed and these Rules which is defined in the Act has the same meaning in the Deed and these Rules.

A reference to the Deed and these Rules or any other instrument includes any variation or replacement of them;

A reference to a statute or other law includes regulations and other instruments ("subordinate instrument") made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;

The singular includes the plural and vice versa;

Terms such as "including", "for example" and similar expressions or words are not words or expressions of limitation;

A reference to a person includes:

- (a) a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons; and
- (b) a person's legal personal representatives, successors and assigns;

Where an expression is defined in the Act but is not defined in the Deed and these Rules then that expression will have the meaning given to it in the Act.

Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

Headings are inserted for convenience of reference only and are not to be taken into account in interpreting the Deed and these Rules;

A reference to any thing (including any amount) is reference to the whole or any part of it; and

A reference to a group of persons is a reference to any one or more of them.

## 2. The Fund

### 2.1 Assets

The Fund comprises all assets held by the Trustee at any time in accordance with these Rules. The Trustee shall hold the assets on trust for the objects and purposes of these

Rules.

## 2.2 Name

The Trustee may change the name or promote the Fund under a different name without the necessity of amending the Deed and these Rules.

## 2.3 Single trust

Nothing in these Rules is to be taken as establishing a separate trust in respect of any of the categories of Investment Options, any Investment Option or any part of the Fund.

# 3. Trustee

## 3.1 Trustee

The person or persons named in the Schedule is or are appointed as Trustee.

## 3.2 Regulated superannuation fund

- (a) The number of Trustees appointed shall be in accordance with the requirements of the Act relevant to the number of Members of the Fund;
- (b) If the Trustee is a Constitutional Corporation the sole or primary purpose of the Fund is the provision of Benefits to Members as required under the Act;
- (c) If the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of Old Age Pensions in accordance with this Deed and the Act.
- (d) The Fund may also be conducted for any other ancillary purpose which may be permitted under the Act.

## 3.3 Conditions

- (a) A person that is to be appointed as Trustee must give written consent to the appointment and a declaration that the person understands his or her duties as trustee of the Fund in accordance with the Act before accepting the appointment;
- (b) A person that is to be appointed a director of a Constitutional Corporation as trustee of the Fund must give written consent to the appointment and a declaration that the person understands his or her duties as a director of a Constitutional Corporation that is trustee of the Fund in accordance with the Act before accepting the appointment;
- (c) A member's Legal Personal Representative may act as Trustee in the members stead where permitted by the Act;
- (d) An additional person or persons may be appointed as Trustee by Deed;
- (e) The Trustee must otherwise comply with any other requirements of the Act including, for example, requirements under the Act for approval by the Regulator, requirements as to the qualifications or identity of the person or persons appointed as Trustee or, where relevant, officers or directors of the Trustee corporation;
- (f) A person in the capacity of Legal Personal Representative of a disqualified person cannot be a director of a Constitutional Corporation that is trustee of the Fund.

## 3.4 Termination of Trustee's office

### 3.4.1 A Trustee will hold office until:

- (a) the Trustee resigns the office by notice in writing to the Members; or
- (b) the Trustee ceases to be a member of the Fund; or



- (c) being a natural person, dies or becomes incapable of performing his duties hereunder; or
- (d) being a corporation, goes into liquidation or has a receiver appointed or enters into administration; or
- (e) the Trustee is removed or ceases to be eligible or is otherwise disqualified to act as Trustee under the Act; or
- (f) the Trustee is removed by vote of the Members pursuant to Rule 3.4.2.

**3.4.2** A majority of the Members shall have the right to appoint and remove the Trustee subject at all times to the Act.

**3.4.3** If a Trustee:

- (a) retires as Trustee;
- (b) becomes aware that it will be removed as Trustee;
- (c) becomes aware that it will cease to be eligible to act as Trustee; or
- (d) is otherwise disqualified or removed from its office as Trustee;

it must appoint another person to act as Trustee that otherwise complies with the Act (unless there is more than one Trustee and the Act does not require the vacancy to be filled).

**3.4.4** If the Act or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with Rule 3.4.3 or the terminating Trustee fails to do so, the new Trustee may be appointed:

- (a) where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
- (b) where paragraph (a) does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Members;
- (c) by the continuing Trustee or Trustees if that appointment and the holding of office by the New Trustee is consistent with the Act; or
- (d) in accordance with any procedure prescribed by the Act.

**3.4.5** Where the office of Trustee becomes vacant due to the operation of Rule 3.4.1(c) the Member's Legal Personal Representative shall act as Trustee until such time as the Member's benefits have been dealt with as prescribed by these Rules and the Act.

**3.4.6** The terminating Trustee and the new Trustee will record the retirement and appointment by Deed.

### **3.5** Transfer of assets

If a Trustee's office terminates, the Trustee must:

- (a) provide to any Trustee all records, information and other property relating to the Fund in its control; and
- (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Trustee.

### 3.6 Power to appoint

Without limiting any other power conferred on the Trustee by these Rules or law, the Trustee has power to appoint any additional Trustee by deed. This power is to be exercised subject to any relevant provision of the Act.

### 3.7 Number of Trustees

Any limitations or requirements under the laws of any State or Territory relating to the number of trustees do not apply to these Rules.

### 3.8 Reports

The Trustee must lodge such reports and returns with the Regulator as may be required by the Act within the prescribed time.

## 4. Trustee Powers

### 4.1 Powers

Subject to the Act, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development of the Fund or to otherwise further the interests of the Fund;
- (b) may regulate and conduct Trustee meetings or if the Trustee is a corporation meetings of its directors as it considers appropriate;
- (c) has, in addition to the powers conferred by these Rules, all the powers conferred on a trustee by statute or general law;
- (d) has the power to do anything required or permitted by the Act.

### 4.2 Examples of Powers

Without limiting Rule 4.1 and in addition to any powers described in these Rules the Trustee has power to:

- (a) accept any assets given or transferred to the Trustee as a Contribution by a Member or other person under these Rules;
- (b) retain an asset in the condition it is received by the Trustee as the Trustee may determine notwithstanding that it may have a wasting, reversionary or depreciating nature;
- (c) retain any part of the Fund in cash as the Trustee may determine notwithstanding that the cash retained may not be earning interest;
- (d) retain for such period as the Trustee may determine any assets notwithstanding that it may not be producing any income;
- (e) purchase or otherwise acquire any assets (whether income-producing or not) in any country upon such terms and conditions as the Trustee may determine;
- (f) acquire and retain life insurance policies on the life of any Member and upon such conditions as the Trustee may determine;
- (g) acquire and retain an annuity for such period and on such terms and conditions as the Trustee may determine;
- (h) advance or lend money to any person, corporation, bank, government, public body or authority in any country, either with or without security and either bearing or not bearing interest and in such currency and upon such terms as the



Trustee may determine;

- (i) **lend any assets other than money to any person or corporation, either with or without security and for such period and upon such terms as to use, return and otherwise as the Trustee may determine. If the Trustee takes any security in relation to assets advanced or lent, the value of the security may be less than the value of the assets advanced or lent and the Trustee shall not be obliged to obtain any valuation of the security or the assets lent.**
- (j) **sell, exchange or otherwise dispose of any assets and to grant options or rights to purchase, exchange or otherwise acquire any assets upon such terms and conditions as the Trustee may determine; and to vary any contract for sale, buy at any auction, rescind any contract for sale and resell upon such terms and conditions as the Trustee may determine;**
- (k) **lease or license and to grant options or rights to lease or license any assets to any person for such period and for such rent or consideration including rent free and upon such terms and conditions as the Trustee may determine;**
- (l) **to the extent permitted by the Act to borrow money;**
- (m) **join or enter into partnership or into any arrangement for sharing of profits, co-operation, joint venture or otherwise in any country with any person, corporation or other Fund for the purpose of promoting or carrying on any business, scheme or undertaking of any nature upon such terms as the Trustee determine;**
- (n) **make, add to, enlarge, alter, demolish or reconstruct any improvements on any land whether the title to such land be freehold, leasehold or some other title;**
- (o) **repair, maintain, renovate or improve any assets;**
- (p) **insure any assets in which the Trustee has an interest on such terms as the Trustee may determine. Any such insurance need not be for the full value of the assets insured. The Trustee shall not be obliged to obtain any valuation of any assets for the purpose of insuring it;**
- (q) **surrender any assets upon such terms as the Trustee thinks fit;**
- (r) **accept any shares, units, notes, debentures or other securities in any corporation and/or other Fund in any country in place of or in exchange for any shares, units, notes, debentures, or other securities forming part of the Fund;**
- (s) **exercise all rights and privileges in respect of any shares, units, notes or other securities forming part of the Fund as the Trustee may determine;**
- (t) **pay calls on any shares, units, notes, or other securities or to allow same to be forfeited;**
- (u) **allow documents of title in respect of any assets to remain out of the possession of the Trustee whether with or without security and for such period and upon such terms and conditions as the Trustee thinks fit;**
- (v) **allow any assets to be held by or registered in the name of any person in any country whether with or without security and for such period and upon such terms as the Trustee thinks fit;**
- (w) **give receipts for capital and other monies and to allow any person or corporation to give a receipt on behalf of the Trustee. Any receipt shall be a valid discharge to the person, corporation or Fund in whose favour it is given;**
- (x) **commence, defend or otherwise take part in any proceedings in any court, tribunal or other judicial, quasi-judicial or administrative body, including any arbitration. The Trustee may conduct such proceedings in such manner as it thinks fit and may discontinue, withdraw from, compromise or proceed to the**



final determination of any such proceedings on such terms (including a total admission of liability at any stage of the proceedings) as the Trustee thinks fit;

- (y) compromise, compound, abandon or otherwise settle any debt, account, or claim relating to the whole or any part of the Fund's assets including releasing in whole or in part the payment or transfer of any assets owing or due to the Trustee.
- (z) move, transmit or reinvest all or any part of the Fund's Assets to whatever location and at such time or times as the Trustee may determine;
- (aa) do anything and to execute any writing incidental to or which may facilitate any exercise of the powers, authorities and discretions conferred on the Trustee by this Rule;
- (bb) invest in any asset available to the Trustee including assets outside of Australia provided that this does not prejudice its ability to receive the taxation concessions provided to regulated self-managed superannuation funds under the Act;
- (cc) settle, compromise or submit to arbitration any claims, matters or things relating to these Rules or to the rights of Members, former Members or Beneficiaries;
- (dd) commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, or breach of the terms of these Rules and the Trustee may abandon compromise or release any such legal proceedings as it may consider desirable;
- (ee) insure or reinsure any risks or liabilities of the Fund with an insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (ff) purchase an annuity to provide all or a part of the benefit payable to a Member;
- (gg) retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (hh) pay and advance out of the Fund all costs, expenses and outgoings (including tax) of and incidental to the management of the Fund;
- (ii) provide a full or part release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or membership of the Fund by that person;
- (jj) insure and keep insured as it sees fit any liability of the Trustee or any directors or officers of the Trustee or the liability of the Fund or indemnify or reimburse the Trustee or its directors or officers under these Rules;
- (kk) enter into and perform:
  - (i) any transaction involving, or in connection with, an exchange of streams of payment between counterparts whether directly or indirectly;
  - (ii) any transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date;
  - (iii) any transaction for managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or against costs of borrowing, lending or obtaining financial accommodation;
  - (iv) to enter into any option agreement relating to any lending or financing facility agreement or transaction.



and without limiting the generality of the foregoing, the power conferred on the Trustee as aforesaid shall include power for any purpose to enter into and perform any interest rate swap or exchange transaction, currency swap or exchange transaction, rate cap, rate floor, rate collar, option contract relating to swaps, futures contract, currency option and forward rate agreement or any interest and or currency protection transaction or any combination of such transactions, contracts or agreements or any other transactions, financial arrangements or contracts of a kind or class similar to the transactions herein referred to.

- (ll) engage brokers and commission agents against and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world to buy, sell, open, close out or otherwise deal in futures contracts of all kinds and to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss orders to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or future exchange.
- (mm) buy, sell, open, effect orders for, enter into, vary, exercise, abandon, exchange, close, open, or otherwise deal in instalment warrants and contracts for difference of all kinds and enter into and perform any transaction or agreement relating to or of a kind or class similar to the transactions herein referred to;
- (nn) generally do all acts the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under these Rules.

#### 4.3 Compliance

- (a) The Trustee must do all things and must not do or fail to do anything as the Trustee of the Fund that would result in any of the following:
  - (i) the Fund ceasing to qualify as a complying superannuation fund under the Tax Act or as a complying self managed superannuation fund under the Act;
  - (ii) a breach of law including the Act.
- (b) Without limiting anything in these Rules the Trustee may:
  - (i) do anything that the Trustee considers necessary or desirable in order to comply with the Act; and
  - (ii) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the Act.

#### 4.4 Discretions

##### The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under these Rules;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all;
- (d) may exercise a power even if the Trustee or any of the Trustee's Associates have a direct or indirect interest that may be affected by the exercise of that power or

may benefit directly or indirectly from its exercise;

- (e) may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund and retain for the Trustee's own benefit, any commission, profit or other gain received in connection with such arrangements; and
- (f) may exercise a power even if the Trustee or any of the Trustee's Associates has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Trustee or any Associate are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.

#### 4.5 Fees

- (a) The Trustee must not charge any fees in relation to acting as trustee under these Rules or for performing any services in respect of the Fund.
- (b) If the Trustee of the Fund is a Constitutional Corporation no director of the Constitutional Corporation can receive any remuneration from the Fund or from any person (including the Constitutional Corporation) for any duties or services performed by the director in relation to the Fund.

#### 4.6 Decisions

4.6.1 Subject to Rule 4.6.2, where the Trustee comprises:

- (a) two individuals – Trustee decisions require unanimous approval;
- (b) more than two individuals – Trustee decisions require majority approval;
- (c) a Constitutional Corporation – Trustee decisions shall be in accordance with the governing rules of the corporation unless the Act requires otherwise.

4.6.2 Where there is a deadlock in making any Trustee decision (including at a meeting of the directors of a Constitutional Corporation) the deadlock shall, subject to the Act, be resolved by weighting each Trustee's vote in accordance with their respective Member's Account Balance as a proportion of the total Member Account balances of the Fund.

#### 4.7 Meetings

- 4.7.1 Subject to the Act and the Deed, the Trustees may communicate with each other, meet together and otherwise regulate their business as Trustee as they think fit.
- 4.7.2 The Trustees may communicate via any means they approve, and a resolution passed by such communication method shall, notwithstanding that the Trustees are not present together in the same place, be deemed to have been validly passed at a Trustee's meeting.
- 4.7.3 If all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees as set out in the document, a resolution in those terms shall be deemed to have been validly passed.

#### 4.8 Delegation

Subject to the Act the Trustee may delegate any of the Trustee's powers duties and discretions to any person on any terms the Trustee thinks fit and may alter or revoke any delegation.



## 5. Limitation of Liability

### 5.1 Limitation

Subject to Rule 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason. This limitation applies whether or not the loss or detriment arises from an act or omission on the part of the Trustee director or an officer.

### 5.2 Exceptions

Rule 5.1 does not apply:

- (a) to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise;
- (b) in any other circumstance specified by the Act in which the liability of a Trustee or director or officer of a Trustee of a regulated superannuation fund may not be excluded or limited; or
- (c) where the limitation expressed in Rule 5.1 would not otherwise be enforceable at law.

## 6. Indemnity

### 6.1 Indemnity

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under these Rules.

### 6.2 Payment and reimbursement

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in Rule 6.1; and
- (b) to meet all expenses and liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with these Rules.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

## 7. Investment

### 7.1 General

7.1.1 The Trustee shall invest the assets of the Fund in such a manner that complies with the investment strategy of the Fund and does not contravene the Act;

7.1.2 Subject to the Act, the Trustee may invest the assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the assets. To the maximum extent possible any duties and limitations under State laws relating to trustee investments do not apply to the Fund.

7.1.3 Subject to Rule 7.1.1 and without limiting Rule 7.1.2, the Trustee has in addition to the powers in Rule 4 the power:

- (a) to vary, substitute, sell or otherwise deal with assets in any manner;
- (b) to acquire an interest in an asset jointly with any other person and mix assets of the Fund with other property (as long as separate records are maintained that enable assets attributable to the Fund or any Investment Option to be identified); and
- (c) to acquire and use financial instruments in any manner consistent with the Trustee's investment strategy for the Fund or for any Investment Option including for the purposes of risk management and enhancing investment returns or in substitution for physical holdings.

7.1.4 The Trustee must not invest in any investment that is forbidden by the Act. The Trustee must not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member.

## 7.2 Investment strategy

7.2.1 Investments of the Fund must be made in accordance with a written investment strategy formulated by the Trustee that complies with the Act. Such strategy to be formulated in light of all of the circumstances relevant to the Fund including but not limited to:

- (a) the risk involved in making, holding and realising, and the likely return from the Fund's investments considering its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's (or part of the Fund's) investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments considering its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;
- (e) the investment strategy may consist of one strategy for the whole of the Fund or separate investment strategies for the various parts of the Fund.

7.2.2 The Trustee shall review the Fund's investment strategy regularly and may amend that investment strategy after such review or at any other time the Trustee believes is appropriate. If the Trustee amends an investment strategy all Members affected by any such amendment shall be advised in writing of all details of the amendment.

7.2.3 The Trustee may formulate and adopt separate investment strategies for each Investment Option offered in accordance with Rule 14.1.

7.2.4 If the Trustee invests in what are known as derivative investments the Trustee shall, if required by the Act, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Act and any guidelines issued by a Regulator.

## 7.3 Reserves management

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Act.

## 7.4 Valuation

The Trustee will arrange for valuations of assets at such times and on such basis as it considers appropriate, subject to the Act.



## 7.5 Investment earnings

7.5.1 As at the end of each financial year, and at such other times as the Trustee determines, the Trustee shall distribute the whole or any portion of the Investment Earnings of the Fund as the Trustee determines to be appropriate to the Member's Account(s) maintained in respect of each Member.

7.5.2 Any Investment Earnings not applied to Member Accounts in accordance with Rule 7.5.1 shall be applied to a Reserve Account maintained under Rule 15.

## 8. Records, Audit and Information

8.1 The Trustee must, in accordance with the Act:

- (a) keep records and accounts for the Fund;
- (b) prepare and/or lodge financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to Beneficiaries, prospective Members, Employers, a Regulator and any other person in connection with the Fund.

8.2 Without limiting anything else in these Rules the Trustee must comply with all relevant requirements of the Family Law Legislation in relation to the provision of information to any affected person in connection with the Fund and the interest or claims of any Member, Member Spouse or Non Member Spouse therein.

## 9. Membership

9.1 Eligibility

The Trustee may set eligibility conditions for membership of the Fund.

9.2 Acceptance

9.2.1 Membership applications:

- (a) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example a child of the person); and
- (b) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 2 provides forms of application to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Rule 12.6.4.

9.2.2 The Trustee may:

- (a) accept or reject any application;
- (b) establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the application;

Prior to making a decision under Rule 9.2.2(a) the Trustee may, subject to the Act, request an applicant to undergo a medical examination and to provide all

relevant information and evidence and sign all documents as may be required by the Trustee.

9.2.3 The Trustee may admit a person as a Member even though a formal application has not been completed where:

- (a) the applicant is under eighteen years of age and the applicants Legal Personal Representative is eligible to act as a Trustee; or
- (b) the applicant becomes entitled to a benefit or interest in the Fund under an order or agreement made pursuant to the Family Law Legislation.

### 9.3 Timing

If a membership application is accepted the person's membership will commence from:

- (a) the date on which the Trustee accepts the application; or
- (b) another date agreed by the Trustee and the Member.

### 9.4 Rules

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by these Rules.

### 9.5 Member's attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

### 9.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all benefits to which the Member has become entitled under these Rules have been paid;
- (b) the whole of the Member's Account Balance relating to that Member has been transferred out of the Fund in accordance with Rule 13.2;
- (c) the Member dies;
- (d) the Member is required to cease his membership to comply with the Family Law Legislation or an agreement made pursuant thereunder;
- (e) the Trustee requires that a Member ceases his membership in order to comply with the Act; or
- (f) the Member's entitlement to benefits is otherwise terminated.

### 9.7 Beneficiaries' interests and liabilities

9.7.1 No Beneficiary has any interest in any particular asset of the Fund. Beneficiaries must not

- (a) interfere with the exercise of the Trustee's powers; and
- (b) assert any right in respect of any asset or part of an asset.

9.7.2 The liability of Beneficiaries in connection with the Fund is limited as described below:

- (a) the Trustee's right of indemnity and the right of recourse of any creditor



is limited to the Fund's assets; and

(b) Beneficiaries are not liable (in their capacity as Beneficiaries):

- (i) (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
- (ii) (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

(iv)

9.7.3 The rights of Beneficiaries to receive benefits are those set out in these Rules.

## 9.8

### Member's account

9.8.1 The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under these Rules.

9.8.2 The Member's Account Balance at any time is determined by adding:

- (a) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Rule 13.1;
- (b) investment earnings determined having regard to Rule 7.5 and the requirements of the Act, and any Investment Options applicable to the Member;
- (c) proceeds of any Policy in respect of the Member;
- (d) amounts transferred to the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation; and
- (e) any other amount that the Trustee considers should be credited to the Member's Account;

and deducting:

- (f) benefits paid from the Member's Account or transferred to another Benefit Arrangement in accordance with Rule 13.2;
- (g) any costs or fees deducted from the Member's Account or any other liabilities attributed to it;
- (h) amounts in respect of Tax deducted from the Member's Account;
- (i) any negative investment returns determined having regard to Rule 7.5, the requirements of the Act, and any investment strategy applicable to the Member;
- (j) amounts transferred from the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation;
- (k) any other amount that the Trustee considers should be debited to the Member's Account; and
- (l) the amount of any excess contributions tax liability required to be deducted from that Member's Account in accordance with Rule 11.2.

9.8.3 More than one Member's Account may be maintained in respect of a Member if a Member participates in the Fund in more than one capacity. If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

9.8.4 The Trustee must keep a record of the tax free and taxable component of a Member's Benefit in a Member's Account or Accounts.